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11 TESLA, INC. DBA TESLA MOTORS, INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DEMETRIC DI-AZ, OWEN DIAZ AND
16 LAMAR PATTERSON

17 Plaintiffs,

18 v.

19 TESLA, INC. DBA TESLA MOTORS,
INC., CITISTAFF SOLUTIONS, INC.;
20 WEST VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES,
21 INC.; NEXTSOURCE, INC.; and
DOES 1-10, inclusive

22 Defendants.

Case No. 17-cv-06748-WHO

**DEFENDANT TESLA, INC.'S NOTICE OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO THE CLAIMS FOR
UNRUH CIVIL RIGHTS ACT AND PUNITIVE
DAMAGES**

Date: December 18, 2019
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

Trial date; March 2, 2020
Complaint filed: October 16, 2017

[Filed concurrently with Memorandum of Points
and Authorities, the Declaration of Patricia M.
Jeng, the Declaration of Jeremie Hansen and
Proposed Order]

NOTICE OF HEARING

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on December 18, 2019, at 2:00 p.m., in Courtroom 2 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Tesla, Inc.. (“Defendant” or “Tesla”) will and does hereby move, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an Order granting partial summary judgment in Tesla’s favor, on the ground that there are no triable issues as to any material fact as to the purported claims for relief contained in the operative complaint filed by Plaintiffs Owen Diaz and Demetric Di-az (collectively “Plaintiffs”) in this matter and that Tesla is entitled to partial summary judgment as a matter of law as to his claims under the Unruh Civil Rights Act (the “Unruh Act”) and for punitive damages.

1. Plaintiffs’ claims for race discrimination and retaliation under the Unruh Act fail as a matter of law because the Fremont Factory was not a business establishment furnishing goods, services, or facilities to Plaintiffs as a client, patron, or customer. Plaintiffs’ claims, as alleged employees seeking claims against an alleged employer or an entity in the position of an employer, are not cognizable under the Unruh Act as a matter of law.

2. Plaintiffs are not entitled to punitive damages on any alleged cause of action in the operative Complaint because Plaintiffs cannot show that an officer, director, or managing agent of Tesla committed or ratified an act of oppression, fraud, or malice or acted with reckless indifference.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, declarations (and exhibits thereto), all pleadings and papers on file in this action, which are incorporated by reference into this notice.

Dated: October 29, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Patricia M. Jeng
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